

## ECONOMIC IMPACT STATEMENT

### Department of Administration

Division of Personnel Services

May 1, 2006

The following amended, new, and revoked regulations of the Department of Administration, Division of Personnel Services (DPS), are proposed for adoption. A description of each regulation and its economic impact follows. Amendments to existing regulations that are proposed in order to be consistent with regulatory style are not identified.

Except as specified below, none of these regulations are mandated by federal law, and therefore, they do not exceed the requirements of federal law. Likewise, no other less costly or less intrusive alternatives were identified unless otherwise stated below. (Note: Statements indicating that a regulation is “not anticipated to have any economic impact” or “is not anticipated to have any identifiable economic impact” are intended to indicate that no economic impact on the Department of Administration, other state agencies, state employees, or the general public has been identified.)

#### **K.A.R. 1-2-46 – Length of service.**

#### **K.A.R. 1-2-77 – Retiree.**

K.A.R. 1-2-46 defines the term “length of service” and identifies certain types of work for the state of Kansas that are excluded from that definition, including time worked as a “temporary employee.” For purposes of the civil service personnel regulations in Articles 1 through 14, K.A.R. 1-2-85 defines the term “temporary employee” as “a *classified* position which is limited to not more than 999 hours of employment in a 12-month period,” and K.A.R. 1-6-25 establishes further terms, conditions, and limitations on employment as a temporary employee. However, time spent working in an *unclassified*, temporary position as provided in K.S.A. 75-2935(1)(i), which does not impose a 999-hour employment limit, is explicitly included in the definition of length of service.

Subsection (a)(1) of K.A.R. 1-2-46 is being amended to clarify that only time worked as a *classified* temporary employee in accordance with the provisions of K.A.R. 1-6-25 is to be excluded from length of service. Despite the reference to K.S.A. 75-2935 (1)(i) in subsection (a), there have been some questions about whether the exclusion of time worked as a temporary employee covers unclassified temporary employees. Therefore, this amendment is being proposed to avoid any possible misreading of the exclusion. Since this proposed amendment is merely a clarification and is not substantive, there will be no economic impact from this proposal.

Subsection (g) of K.A.R. 1-2-46 sets out the effect on length of service of an employee’s retirement – it currently provides that “for purposes of leave accrual, layoff, and longevity bonus pay, the length of service of any *retiree* returning to state service” is to be reduced to zero and calculated on the same basis as that for a new hire.” Amendments to subsection (g) of K.A.R. 1-2-46 are proposed in conjunction with the proposed revocation of K.A.R. 1-2-77, which defines the term “retiree.” K.A.R. 1-2-46 (g) is the only place where the term “retiree” is used in the personnel regulations, so a specific regulation defining the term was determined to be unnecessary.

In addition, revocation of the definition of “retiree” in K.A.R. 1-2-77 and the related amendment to subsection (g) remove a potential misreading created by a timing element contained in the definition of “retiree.” The existing definition of “retiree” is “an employee who, *at the time* the person terminates employment with the state, receives retirement benefits” under KPERS or TIAA-

CREF. This timing element possibly could be read as limiting the definition of retiree to only those individuals who actually began receiving benefits immediately upon separation from state service. If that interpretation was to be applied to the provisions in subsection (g) of K.A.R. 1-2-46 regarding length of service, an employee who waited even a day after separating from state service before receiving retirement benefits might argue that the employee's length of service should not be reset to zero if the employee returns to state service after retiring. However, this interpretation does not reflect the existing intent of K.A.R. 1-2-46(g) that, if an employee has retired from state service and subsequently returns to state employment, the length of service accrued by the employee before retiring will not be reinstated. Therefore, the revocation of K.A.R. 1-2-77 and related rewording of K.A.R. 1-2-46(g) eliminate a potential, unintended misreading and inequity, but do not change existing practices or the current application of those regulations.

This proposed amendment will ensure that the length of service of employee who have retired from state service and subsequently return to the State workforce is determined equitably. In practice, no instances have been identified in which an employee who retired from state service and subsequently returned to work for the state had the length of service accrued before retirement reinstated upon returning to work. Therefore, the proposed revocation of K.A.R. 1-2-77 and the proposed amendments to K.A.R. 1-2-46 (g) will have no economic impact.

**K.A.R. 1-3-5 – Definitions.**

**K.A.R. 1-3-6 – Equal employment opportunity; affirmative action.**

**K.A.R. 1-9-18 – Equal employment opportunity, affirmative action; discrimination prohibited.**

K.A.R. 1-9-18 is proposed to be revoked, and the contents of that regulation are being separated into two new regulations: K.A.R. 1-3-5 and 1-3-6. These proposed, new regulations would be placed in Article 3, the title of which is to be changed from “Workforce Planning and Control” to “Equal Employment Opportunity and Affirmative Action” in order to emphasize the importance of these policies.

The provisions of K.A.R. 1-3-5 and 1-3-6 are substantially the same as those found in K.A.R. 1-9-18, but the requirements and terms have been updated to reflect the evolution of the terminology and practices of the State that has occurred since K.A.R. 1-9-18 was last amended. In addition, existing provisions in K.A.R. 1-9-18 prohibiting discrimination have not been included in these new regulations since these prohibitions are covered elsewhere in state law, and the investigation and enforcement of discrimination actions are within the purview of the State Human Rights Commission and not the Division of Personnel Services or any other division of the Department of Administration. Further, the list of characteristics on which employment decisions may not be based, as contained in the definition of equal employment opportunity in K.A.R. 1-3-5, would be amended by adding “military or veteran status” as another characteristic and by adding the phrase “except as otherwise provided by law” in recognition of specialized employment laws that provide for one or more of these characteristics to be a factor in certain employment decisions, such as the veteran's preference provided under Kansas law.

Because these new regulations do not contain new substantive issues or requirements and the prohibition with respect to discrimination remains in place elsewhere in state law, the revocation of

K.A.R. 1-9-18 and the adoption of K.A.R. 1-3-5 and K.A.R. 1-3-6 are anticipated to have no economic impact.

**K.A.R. 1-5-8 – Beginning pay.**

Under the existing provisions of K.A.R. 1-5-8, if authorization is given to one or more state agencies to provide a higher beginning pay rate for new employees in a certain class or geographical area, then each agency receiving that authority is to raise the pay of its current employees who are in the same class or geographical area to the higher beginning pay rate. Current language does not specify exactly how this process is to occur, and there has been some confusion about the timing of the increases for incumbents. Proposed amendments to K.A.R. 1-5-8 clarify the timing of this pay increase by stipulating that the pay increase is to take effect on the first day of the first pay period following the date on which the authorization for higher pay is granted. The proposed amendment makes it clear that the pay increase for incumbents need not be delayed until the agency fills the vacant position that serves as a basis for the request for higher beginning pay.

If an agency has delayed increasing the pay of incumbent employees until it has filled the vacant position that formed the basis for the original request for higher beginning pay, this amendment may have a positive economic impact on current employees of that agency who are in the classes or geographic areas approved for higher beginning pay – in such cases, the incumbent employees would receive the pay increase more quickly as the amendment makes it clear that the incumbents are to be raised to a higher rate of pay when authorization for the higher beginning pay is received. To the extent that the pay increases for incumbents are implemented somewhat sooner, the salaries and wages expenditures of those agencies may increase minimally. There will be no economic impact on the Department of Administration, state employees not in such classes, or the general public.

**K.A.R. 1-6-2 – Recruitment.**

K.A.R. 1-6-2 establishes minimum recruiting standards for vacancies in state agencies. Each job requisition posted on the central notice of vacancy report is to be open to applications from employees within the agency that is posting the job requisition and from persons in the reemployment pool (for individuals who were laid off from a state agency). The proposed amendment to this regulation expands this minimum recruiting standard by allowing persons who separate from state service due to a disability for which they receive disability benefits from KPERs or the U.S. Social Security Administration to be eligible to apply for all posted vacancies. This will provide these individuals with additional opportunities to be considered for state employment and is designed to enhance their ability to return to state service should they choose to do so. This amendment is not anticipated to have any measurable economic impact on the Department of Administration, state employees, or the general public aside from providing the additional opportunities mentioned above.

**K.A.R. 1-6-22a – Training classes.**

K.A.R. 1-6-22a establishes the conditions, requirements, and limitations for classes of positions designated by the director of personnel services as “training classes.” Currently, the duration of the training period served in a training class must be at least six months, but not more than 24 months. Proposed amendments to this regulation remove those standards from the regulation and replace them with language allowing training periods to be specified in written agreements between the director and the appointing authority of the agency in which the training class is used or, when a class is used by multiple agencies, by the Director, after consultation with the affected agencies. Other amendments to the regulation are language clean-up or reorganization.

The qualifications of several professions, notably those in the surveying and inspecting industry, have been changed recently to require years of experience and training that exceed the currently established limits on training periods. As a result, employees are forced to be considered full performance employees and elevated from the training class in which they were hired before they actually complete the certification, experience, and training requirements that are required of their occupation. The amendment will allow agencies with these types of occupations to accommodate their additional requirements within the state classification system.

This amendment will result in employees in certain training classes serving a longer training period than they would have been required to serve under current language, thus taking longer to achieve permanent status and to move to the higher pay grade that coincides with moving from a training class to a full-performance class. However, since there are only a few professions that have requirements that would require a training period in excess of 24 months, we anticipate that this enhanced flexibility will only be needed by a few agencies for specific occupations. This amendment will have no other discernible economic impact.

**K.A.R. 1-9-7b – Military leave; voluntary or involuntary service with reserve component of the armed forces.**

K.A.R. 1-9-7b establishes the conditions and limitations for military leave involving voluntary or involuntary service with the reserve component of the armed forces, including the maximum amount of paid leave that may granted within each 12-month period beginning October 1 and ending September 30 of the following year. The primary amendment to this regulation is a proposed increase in the amount of military leave with pay available to eligible employees from 12 working days to 15. This increase is being proposed to recognize the armed forces’ increased reliance on its reserve component for military initiatives as well as to bring Kansas into line with other states with respect to this type of leave.

This amendment will have a positive impact on employees called to active duty in that they will have three additional days of paid military leave to use before using their own accrued leave or military leave without pay. The employing agencies would be required to provide the three additional paid days of leave, which may result in additional expenditures for salaries and wages to the extent that affected employees may have otherwise used military leave without pay. However, insufficient data is available to provide an estimate of additional expenditures that may result.

In order to insure that the increase from 12 to 15 working days of paid military leave is implemented in an equitable manner, the amendments to this regulation will be effective on October 1, 2006. This is the beginning of the Federal Fiscal Year and employees' paid military leave balances are renewed for the upcoming year on that date. Therefore, the delayed effective date will insure that all employees have the full year to use the increased military leave with pay.

The remainder of the proposed amendments to this regulation are minor amendments that mirror the corresponding provisions of the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA). The existing regulation is not in conflict with USERRA. But by conforming the language of the regulation to that contained in USERRA, these amendments will help to simplify the proper implementation of the provisions of USERRA. Therefore, these amendments will have no identifiable economic impact on the Department of Administration, state agencies or employees, or the general public.

**K.A.R. 1-9-25 – Alcohol and controlled substances test for employees in commercial driver positions.**

**K.A.R. 1-9-26 – Pre-duty controlled substances testing for employees in positions assigned commercial driver functions.**

Currently, these regulations consist primarily of a restatement of the provisions of the Federal regulations concerning alcohol and drug testing of applicants and employees in commercial driver positions along with provisions that establish a uniform, statewide standard for areas in which those Federal regulations give employers some discretion. For example, the Federal regulations detail the types of employees that must be tested and the reasons for which employees can and must be tested, but they leave flexibility to employers with respect to such things as the level of disciplinary actions that are to be taken against employees for certain violations of these policies.

Since the provisions contained in the Federal regulations are already set out in Federal law, much of these regulations are redundant. As a result, we are proposing to remove those portions of the regulations already found in Federal law so that these regulations only address the areas in which the State of Kansas has established its own policies and procedures for issues involving the alcohol and drug testing of applicants and employees in commercial driver positions.

The amendments to these regulations do not change the existing policies in any way, but there are a number of instances in where existing language was restated or restructured for clarity. Since there are no substantive changes, these amendments will have no identifiable economic impact.